IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 26 of 2006()

CC.1362/2005 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER: COMPLAINANT.

THEKKAN MOHAMMED, S/O.ALAVI HAJI,
THEKKAN HOUSE, CHAPPANAGADI,
MALAPPURMAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: ACCUSED & STATE.

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1. THE STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. AVARUMASTER, HEADMASTER (RETIRED),
G.M.L.P SCHOOL, CHEPPANANGADI,
MALAPPURAM DISTRICT.

3. SAFIYA, D/O.HASSAN,
MUTHUPPURAM HOUSE, CHAPPANANGADI, MALAPPURAM
DISTRICT.

4. GAFOOR, S/O.MAMMOOTTY, VADAKKAN HOUSE,
CHAPPANAGADI, MALAPPURAM DISTRICT.

5. ABDU RAHIMAN, THAYIL HOUSE, NEAR
G.M.L.P. SCHOOL, CHAPPANANGADI,
MALAPPURAM DISTRICT.

6. SARAMMA, HEADMISTRESS,
G.M.L.P SCHOOL, CHAPPANANGADI,
MALAPPURAM DISTRICT.

7. KUNHIMOHAMMED, S/O.HAMZA,
VADAKKAN HOUSE, PONMALA,
MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED
SRI.DEVIDAS.U.K
SRI.SABU THOZHUPPADAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.26 of 2006

Dated this the 30th day of November 2006

O R D E R

The petitioner is the sole accused in S.C.No.430/2004 and he faces indictment for the offence punishable under Section 308 I.P.C. That case has been committed to the court of Sessions and already listed for trial.

2. On the complaint filed by the petitioner, Crime No.207/2004 was registered by the police. The allegations in the sessions case and the allegations in the said crime are in the nature of the case and counter case, submits the learned counsel for the petitioner. That crime No.207/2004 was referred by the police and thereupon the petitioner filed a private complaint and cognizance has been taken in that private complaint. The said private complaint is pending as C.C.No.1362/2005. The sessions case has become ready for trial now. The proceedings in C.C.No.1362/05 before the J.F.C.M. Malappuram has not been commenced. The petitioner wants the counter case C.C.No.1362/05 to be committed to the court of Sessions and further wants that case to be disposed of along with S.C.No.430/2004.

3. If the two cases are in the nature of a case and counter case, I have no hesitation to agree that the two cases must be tried and disposed of by the same court. The petitioner, according to me, need only file a petition under Section 323 Cr.P.C before the learned Magistrate appraising him of the need and necessity to commit the case to the court of Sessions, where the main case is pending. The petitioner has not done the same so far. It is submitted that the petitioner had earlier filed a petition before the learned Sessions Judge to transfer the case. On realising that the said request may not lie, he has withdrawn the petition and thereafter the petitioner has come to this court with this Crl.M.C. The trial of this sessions case is listed, it is submitted. I do not in these circumstances want to issue any directions forbidding further progress in the sessions case but I must certainly observe that the petitioner must move the learned Magistrate and request the committal under Section 323 Cr.P.C. He must also make the request to the learned Sessions Judge that the two cases deserve to be tried together and that appraises the learned Sessions Judge, the steps have been taken to take the counter cases committed under Section 323 Cr.P.C. The learned Magistrate must pass appropriate orders on such application under Section 323 Cr.P.C immediately. The learned Sessions Judge must not proceed to

pronounce judgment in this counter case, if it be a counter case is also tried and is disposed of along with the main case. With the above observations, this Crl.M.C is dismissed but it is directed that if the petitioner wants the case to be committed, he must make an application immediately - within a period of one week before the learned Magistrate and the learned Magistrate must pass appropriate order on such application within a further period of seven days.

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006